

**COMMENTS ON THE DRAFT
PRINCIPLES OF THE
HOUSING LAW**

Prepared for



East European Regional Housing Sector
Assistance Project
Project 180-0034
U.S. Agency for International Development,
ENI/EEUD/UDH
Contract No. EPE-C-00-95-001100-00, RFS No.
709



THE URBAN INSTITUTE

2100 M Street, NW
Washington, DC 20037
(202) 833-7200
www.urban.org

Prepared by

Carol S. Rabenhorst

and

Douglas B. Diamond

with

Sally Merrill and Maris
Mikelsons

May 1997
UI Project 06610-709

TABLE OF CONTENTS

CONDOMINIUM PROVISIONS	1
Analysis of Legal Issues in Establishment and Operation of Condominiums	1
Requirement of establishing an owners' association.	1
Legal status of Owners' Association.	3
Registration.	3
Comments and Recommendations	4
DEVELOPING A PRIVATE RENTAL HOUSING SECTOR IN SLOVAKIA	7
Role of Private Rental Housing	7
Role of Public Rental Housing	8
How to Create a Private Rental Market	9
Not By Constructing Big Buildings.	9
By Making Public Rents Realistic.	9
By A Strong Legal Foundation.	9
Suggested Provisions in the Housing Act	10
Adding Specific Provisions	12

COMMENTS ON THE DRAFT PRINCIPLES OF THE HOUSING LAW

CONDOMINIUM PROVISIONS

Analysis of Legal Issues in Establishment and Operation of Condominiums

Throughout Central and Eastern Europe, multifamily housing privatization laws have provided for transfer of ownership of a proportionate share of the common property of the building as well as the individual apartment, creating the condominium form of ownership in all privatized buildings. Condominium regulations provide guidance to homeowners on the rights and responsibilities of ownership and conditions and procedures for establishing and operating condominium associations.

Experience over the past five years has shown that the legal framework must be clear and comprehensive to promote effective condominium development and operations. More specifically, this experience in CEE, together with experience in condominium practice from other countries, has taught that there are three legal prerequisites to the proper functioning of condominiums: (1) there must be an association of owners to which all owners are required to belong; (2) the association must have the power to act as a legal entity; and (3) registration procedures must establish title to the property and the legal authority of the association.

Requirement of establishing an owners' association. Throughout the region, policy makers, legislators, and residents themselves have come to realize that condominiums in privatized housing have a better chance of succeeding, both in terms of owner satisfaction and improvement in housing conditions, if an Owners' Association is required by law to be established and put into place in each building at the time privatization sales begin. This requirement is particularly important in the context of privatized housing in former socialist countries, where the former tenants had no expectation of owning their own homes and no previous opportunity to make decisions about their living conditions or the management of funds used to operate their housing. Without a functional legal and organizational framework, these new owners would have little idea of how to meet the demands of joint ownership of a large, complex piece of real estate.

In most countries in CEE, Owners' Associations are required in all privatized buildings. In Slovakia, on the other hand, the housing privatization law¹ makes establishment of an Owners' Association an option, not a requirement. The other option is for each of the owners to enter into an individual "management agreement" for maintenance services. In practice, this usually has meant the continuation of services by the municipality's public maintenance enterprise. The decision about the form of management is made at the time of the first privatization sale; therefore, as a practical matter, it is made by the municipality. While the owners theoretically are free to change this decision at a later time, this is unlikely to happen. Without the organizational structure of an association at the outset, it will be very difficult for the owners to get together, agree to establish an association, and undertake the steps necessary to bring this about.

¹ Law of the National Council of the Slovak Republic No. 182/1993 "On the Ownership of Apartments and Nonresidential Spaces," and its successor, Law No. 151/1995.

The city of Košice was the first municipality in Slovakia to develop a comprehensive privatization program under which city officials inform prospective owners of all their rights, and provide assistance for establishing an Owners' Association for those buildings that request it. Most privatized buildings have chosen to establish an Owners' Association, and satisfaction with this form of management and governance is quite high. This program is now serving as a model for other cities in Slovakia, where condominiums without Owners' Associations have been established and have proven to be less effectively managed.

Where public maintenance enterprises are implementing privatization, they are not encouraging tenants who buy their apartments to form Owners' Associations, but are signing them up for individual maintenance contracts with the enterprise. This makes it difficult for the owners to organize an association and contract for better or cheaper services for the building, which in turn perpetuates the feeling that nothing changes with ownership -- the same public company maintains the building, often providing substandard services, and makes decisions that properly should be made by the owners. In Košice, the local government resolved this problem by hiring a private firm to process sales contracts and produce technical reports for buildings, steps which are mandated by law as part of the registration process but in most places are carried out by the local public maintenance enterprise. This has resulted not only in formation of Owners' Associations in Košice, but also has increased the capacity of the city to privatize in a timely way and has supplied newly formed associations with the proper documentation needed to register their buildings.

Some comparisons with other countries in the region may be useful. Under Hungary's condominium law, which was adopted in 1977, condominiums can choose between electing a board of directors to act on behalf of the owners in managing the property or hiring a "common representative," a property manager who need not be an owner but who is authorized to represent the owners in entering into contracts and making decisions about operations of the property. The common representative form of management has proved to be unworkable in Hungary, especially in the case of privatized buildings, where the residents have little experience or understanding of the rights and responsibilities of ownership. Partly as a result of this provision, efforts have begun to amend and modernize the Hungarian condominium law. The Government of Hungary's housing policy mandates that a new condominium law be presented to Parliament by 1997.

Some policy makers in Slovakia have expressed interest in the form of management used in Slovenia, where a housing manager must be hired by the owners. The scope of authority of the housing manager in Slovenia seems very similar to that of the common representative in Hungary, and these forms of management share the same shortcoming: the manager usurps some of the authority and decision-making power that should belong only to the owners in privately-owned housing. For example, in Slovenia, the manager can have major repairs or even renovations made to the building with only a majority of the owners approving this work. A decision of this magnitude should be made by the owners in the first instance. Even more fundamentally, the decision of whether or not even to hire a manager should be made by the owners, not mandated by law.

Legal status of Owners' Association. Another vital element of the legal framework for the successful operation of condominiums in privatized housing is the power of the Owners' Association to act as a legal entity. With this authority, the Owners' Association can ensure that the property and contract rights of the owners are protected, and it can enforce the obligations of the owners to the association. As a registered legal entity, the association can enter into contracts with service providers, employees, and other contractors, and can use the property and association assets to secure credit.

In condominiums in Slovakia where no Owners' Association has been established, it is not clear how the owners will carry out operations necessary to manage the building effectively. Even where there is a management agreement, there may be work that the owners would like to perform that is outside the scope of the management contract, or the owners may want to borrow money or lease or sell part of the common property. Without an Owners' Association with legal authority, the owners have no way to undertake these and many other activities.

Under the Hungarian condominium law, the Owners' Association is not a legal person. Only the common representative or the president of the board of directors has legal authority to represent the other owners. This has constrained efforts to improve the condition of the housing because the Owners' Association has no authority to borrow for common property repairs or renovation. In order to obtain bank financing (more readily available for residential purposes in Hungary than in other countries in the region, including Slovakia), loan agreements must be negotiated with each unit owner in a building. All owners must agree to the loan terms before a bank will make funds available if the property is used as security for a mortgage loan. This limitation is another impetus for the Government's decision to modernize condominium operations in that country by adopting a new law.

Registration. Two kinds of registration are necessary to establish a functioning condominium. The first is registration in the property records of the residents' ownership interests (the unit and the share of common property), usually carried out in the real property registration or cadastral office in the appropriate local jurisdiction under legally mandated procedures as part of the privatization process. The second is the registration of the Owners' Association, carried out under authority of the court system or a special office in the jurisdiction for registering non-natural entities such as nonprofit associations or business enterprises. To register an Owners' Association, a special document (in Slovakia called an Association Agreement), must be prepared and approved by the owners. This document functions as a contract among the owners, setting out their individual and collective rights and responsibilities, including their financial responsibilities to the association, and binding them to comply with the laws applicable to condominium owners and to rules adopted by the association. Relevant laws provide certain basic provisions that must be included in the Association Agreement; other matters are left to the discretion of the owners.

Comments and Recommendations

No. 13. This principle (at least as it has been translated) states that an agreement among condominium owners is mandatory only until all the units have been sold. Perhaps the drafters feel that the owners should be able to decide for themselves after all the units are privately owned. This would be ill-advised.

In fact, as discussed above, condominium laws throughout the world require that condominium owners be organized in an Owners' Association that is a legal person. This is necessary for the protection of the owners and for ease of operations. Each owner cannot be permitted to make unilateral decisions about the maintenance and use of the common property, for example. It is also important for the protection of third parties who deal with the building, such as contractors, service providers, or creditors. It is unreasonable to expect a party with a claim against a condominium to seek compensation from each owner individually.

In the case of a complex property such as a condominium, the rights of individual owners to make decisions about their property must be balanced against the interests of others who do business with the property. That is why most other countries have condominium laws that mandate the establishment of an owners' Association.

It is strongly advised that the law to require the existence of an Owners' Association as well as an operating Association Agreement in each building. This was an omission from Law No. 182/1993 (and its successor, Law No. 151/1995) that has caused difficulties for many buildings undergoing privatization, and can be corrected now.

The principle should be as follows:

All owners of units in an apartment house shall be members of an Owners' Association, which shall be registered as a legal person. Relations among the owners with respect to the house, units, and non-residential spaces shall be regulated through an Association Agreement. The Association Agreement shall cover all substantial issues in relation to the administration and management of the house, the rights and responsibilities of the owners, rules of house operation and maintenance, and the like.

No. 15. This provision appears to require a three-month waiting period before a unit in an apartment house can be sold. This would be an undesirable restriction on the owner's right to dispose of his property. The same purpose could be achieved by reducing the period to a shorter time, perhaps one month. In all cases, the other owners should be allowed to waive their pre-emption rights (which undoubtedly would occur in most cases), and permit the sale to go ahead on a more timely basis.

There is no rational justification for not permitting condominium associations (or groups of owners or all owners as joint owners) to own an apartment in the building. (This restriction was included in the previous condominium law, and perhaps was carried forward without thinking through its implications.) Property owned by the Owners' Association could be used for a janitor's apartment, or could be rented to generate income for the association.

The principle should be as follows:

Owners of other units in a jointly owned house have an exclusive right for thirty (30) days to purchase a unit in the house when a unit is sold, except in the case of transfer of a unit by a previous owner who is a natural person to a person close to the previous owner. Contracts for transfer of ownership to a person other than a close person are null and void if



made during the pre-emption period, which shall begin when the seller gives written notice of the terms of sale to the other owners.

The other owners may waive their right of pre-emption. When such waiver is given in writing to the seller by all other co-owners, the seller may proceed immediately with the sale to any person.

No. 16. For the housing market to function efficiently, creditors should not have to wait the long pre-emption period currently provided in No. 15 before selling an apartment acquired through foreclosure of a lien.

Principle No. 16 does not need to be changed if the pre-emption period in No. 15 is shortened to thirty (30) days, and the waiver provision is explicit, except for elimination of the last clause in the third paragraph, which provides that if there is no Owners' Association, a lien is established in favor of all the co-owners. That paragraph should read:

A lien on each of the units to secure receivables from individual owners arising out of legal acts concerning the entire house is established in favor of the Owners' Association at the time of registration of the Owners' Association.

No. 18. The owners of an apartment building should not be jointly and severally responsible for maintaining all the units in the house. This is contrary to the existing condominium law of Slovakia and to universal condominium practice, which requires each owner to be responsible for maintaining his own unit, and for the Owners' Association to be responsible for maintaining the common property (the commonly owned parts of the building).

The principle should read:

Each owner in an apartment house is responsible for maintaining his own property in good repair at his own expense. In maintaining the unit, no owner may infringe upon or damage the common property or the property of any other owner.

Ordinary repair, maintenance, and improvements to the common property shall be the responsibility of the Owners' Association, and the expenses incurred in performing these responsibilities shall be common expenses to be shared among the owners.

No. 19. This section (like No. 13) states that an association of owners in an apartment house is required only until all of the units have been sold. As noted above, an Owners' Association is just as important after all of the units have been sold as it is before all the units have been sold. The last paragraph of this principle should be eliminated.

The intent of the last sentence of the first paragraph dealing with rights and liabilities of the owners for the act of the manager is not clear. It would be preferable to leave this out, since these issues should be dealt with under more general provisions of law on the liability of an employer for the acts of an employee.

No. 20. This principle provides for the maintenance of houses, and requires the establishment of a Maintenance Fund. In the case of condominiums, the amount of this fund and its collection and administration should be the responsibility of the Owners' Association. The Maintenance Fund should not be used for the individual units, which are the responsibility of the respective owners, but only for the common property. (See comments on **No. 18.**) It should not include funds other than those collected from the owners; other income should be accounted for separately.

Again, the intent of the last sentence of the first paragraph dealing with rights and liabilities of the owners for the act of the manager is not clear. It would be preferable to leave this out, since these issues should be dealt with under more general provisions of law on the liability of an employer for the acts of an employee.

The principle should read as follows:

The owners of the house may perform maintenance, operation, and repairs of the house themselves, or may commission the performance of such works to a manager, janitor, or other person.

The owners shall establish a Maintenance Fund to provide revenues for maintenance, operation, and repairs of the house. Owners of family houses need not establish such a fund. The Maintenance Fund is not a legal entity. It is administered by the Owners' Association.

Revenues of the Maintenance Fund may be from regular payments or extraordinary one-time payments from the owners of units. The amount of all such payments shall be determined by the Owners' Association. If regular payments and other revenues are insufficient to cover the costs of maintenance, operation, and repairs of the house, the Owners' Association may assess an extraordinary payment.

Expenditures from the Maintenance Fund may be used to cover the costs of:

- maintenance, cleaning, and repair of the common property of the house, including the land appurtenant to the house owned by the house owners;*
- modernization, remodeling, and rehabilitation of the common property of the house;*
- activities of the janitor or other person who performs maintenance and provides for the operation and repair of the common property of the house; and*
- repayment of credits taken for maintenance, repair, and rehabilitation of the common property of the house.*

No. 41. Once again, it is not advisable to allow condominiums to exist without an Owners' Association. The provision that an Owners' Association is required only until all units have been sold should be eliminated.

DEVELOPING A PRIVATE RENTAL HOUSING SECTOR IN SLOVAKIA

During the period of socialism, the State played the dominant role in the direct provision of housing, especially in urban areas. No scope was allowed for any private party to provide housing to a third party on a commercial basis. Thus, Slovakia has no legal infrastructure to support a private rental market. Naturally, there is also some confusion as to how private rentals differ from public rentals.² This report briefly examines the nature and role of private rental markets and offers some suggestions as to how to develop the legal parameters of the sector.

Role of Private Rental Housing

Slovakians need access to private rental housing. Its advantages derive from three simple facts about renting, instead of owning, housing. First, occupancy is separate from ownership. This saves the cost of marketing the property and transferring ownership every time residency changes. Second, paying rents only relies on current cash flow into the household, not past accumulation. Ownership requires accumulation of substantial cash assets. Third, rental housing requires minimal management and maintenance activity by the resident himself or herself.

In a country where the private rental market is well developed, it is easy to see the importance of private rental housing. It caters to those people who are mobile, either socially, economically, or geographically. Young adults who are not ready to marry but are economically and socially independent of their parents can easily find accommodation without financial commitment. The same applies for households in the process of divorce. Households with changed economic circumstances, particularly in the downward direction, can adjust their housing accommodations accordingly. Finally, and very importantly for Slovakia, households changing their geographic location, usually for reasons of employment, can easily find accommodation upon arrival and while determining if the employment will be durable, or simply while searching for a home they would like to buy.

In addition to those in some degree of transition, it also caters to those who have not gathered the substantial financial resources needed to outright own a flat or house. While for many this status is just a temporary stop in the process of economic mobility, it is a permanent situation for some lower-income households.

The private rental sector also plays an important role from the macroeconomic perspective. When private individuals are comfortable with becoming landlords, they can take advantage of this opportunity for investment in a small-scale enterprise. This also means the government has less need to build and lease housing itself. This not only conserves scarce public resources, but also avoids the difficulties that public landlords have currently of keeping rents high enough to cover costs and in disciplining non-payers. Moreover, the private sector will provide the rental housing in the locations and of the quality (generally in existing buildings) that tenants want and can afford.

Role of Public Rental Housing

Public rental housing is usually assigned certain social welfare purposes well beyond the goal of private landlords (which is to achieve a reasonable return on their investment of time and funds). These purposes usually include (1) subsidizing the housing consumption of lower-income households, (2) buffering households from shocks to their economic or social circumstances, and (3) housing those with undesirable social characteristics.

² In fact, even several Western European countries essentially decided after the War not to permit a normal private rental market, first as a temporary expedient and then as a matter of social policy. During the 1980s, most of these countries accepted the usefulness of housing provided by private landlords.

These purposes are met by adding two characteristics beyond those noted for private rental housing. These are (1) below-market lease terms, especially rent, and (2) weak enforcement of lease terms. The latter element permits the tenant the ability to default on rent payments with greater impunity and makes it easier for public rental housing to serve those with social handicaps that might not be housed otherwise.

Unfortunately, these differences essentially mean that public rental housing can not serve the same purposes as private rental housing. When public rents are substantially less than private rents, tenants will be much less mobile. Once someone gains access to a public rental unit, they develop "ownership" rights to a valuable ongoing subsidy. Unless they can easily carry those rights with themselves (through a housing allowance scheme) or sell those rights to others, they will be deterred from moving from the unit. There will be waiting lists, something that rarely exists in private rentals. Even when tenants have some ability to transfer these rights through the gray market sale of tenancy rights, the key usefulness of rental housing remains diminished, because a change in residence now involves the marketing and transfer of "ownership" rights, which complicates mobility and imposes a prior-savings burden on would-be entrants into public rental housing.

The more common question asked in Western countries today is whether there is any role for public rentals. Many countries, including the United States and Germany, have experimented with providing lower-income households with a housing allowance which permits them to seek housing from private landlords, despite the "higher" rent. These countries have found it to be actually less costly to assist those in need of help in such a manner than to operate their own housing. They have stopped building public rentals and also find that a housing allowance scheme in their existing public rentals allows the subsidy provided to vary according to the need for it.³

In the near term in Slovakia, there will undoubtedly remain some public rental housing and perhaps more will be built. The net amount of it will shrink if rents rise towards covering the operating costs, with most choosing to buy once the rental subsidies are reduced. But this will not happen overnight. Moreover, a large part of the populace probably has an ingrained view that the government is their landlord. Thus, the new law must address the obligations of public landlords. But it also must lay the groundwork for private rentals. Thus, it is necessary to differentiate between them when framing the housing laws.

How to Create a Private Rental Market

Not By Constructing Big Buildings. A common misunderstanding about private rental housing is that it appears only when private developers build large blocks of flats. While this is one method of creating a supply of private rental units, it is both unnecessary and unlikely to occur in Slovakia in the near term.

Two statistics from the US market make the alternative clear. First, about one-third of all private rentals are in family houses. Second, about one-fourth of private condominium flats are rented out. In other words, private rental housing is commonly provided by small-scale individuals.

Private rental housing primarily requires confidence by individuals that they can make a good return on their efforts (which requires that rents not be regulated). A private rental market can be built around the substantial number of units that are vacant currently for various reasons, including the resident is temporarily in another town or country, or has moved in with relatives or

³ In other words, the rents are set according to the costs of construction, operation, and administration, as well as premiums or discounts for advantageous or disadvantageous locations, and then the subsidy granted to each tenant is based on the circumstances of that household. Shifting to such a system will also greatly encourage the private rental market, by closing a gap between public and private rents that the public thinks indicates the rapaciousness of landlords.



another person. Alternatively, rentals are viewed as an excellent investment for individuals, especially for producing extra income in retirement. Sometimes individuals accumulate funds to buy units to rent, but often it is simply a matter of buying a new unit for themselves and keeping the previous unit to rent out.

By Making Public Rents Realistic. The creation of a private rental market is closely related to the rationalization of the current public rental and cooperative sectors. As long as public rents stay very low, most tenants would prefer not to buy their units and the gap between public rents and private rents will be so large as to encourage would-be tenants to continue seeking access to public rentals. If rents are moved up to at least the costs of maintenance, widespread privatization will occur and the public will begin to accept that housing is indeed expensive, and be more likely to pay private landlords for the privilege of convenient and flexible access to rental units.

By A Strong Legal Foundation. The other necessary ingredient is a legal structure which protects the property rights of the private landlord. Private rentals have no intrinsic social welfare purposes and thus should not be burdened with social welfare restrictions (beyond normal regulation). In particular, at a minimum, this implies an exemption of private rentals from all requirements for alternative housing in cases of default on or at the end of lease terms. Private rentals are intended to be "temporary" housing; that is their advantage and strength and undue restriction on it will simply deny the option to all. In addition, private rentals should be exempt from restrictions on the setting of rents. Social welfare aspects of housing can be better addressed within the public rental sector.

Suggested Provisions in the Housing Act

Most of the provisions of an overall law on housing would apply to private and public rentals equally. These include the definitions of various aspects of the contractual relationship, the remedies of the tenant in the case of landlord failures, exceptions when the tenant agrees to perform certain services, minimum requirements of notices, and so on. This is in general the approach of the Draft of the Principles of the Housing Act.

As for the rights and obligations of the tenant, they are the crucial area for distinction between public and private rentals. Essentially, while it makes sense for a public entity, the national Parliament or a local government, to offer a certain range of rights to tenants in public rentals, the Parliament should approach very carefully to limiting the ability of two free individuals to freely agree on a tenancy contract in a private rental.

The private landlord in particular is taking a large risk in granting use of his valuable property to a stranger and needs to have the ability to specify the prerogatives of the tenant and to have access to strong enforcement mechanisms. Moreover, the private landlord is performing the valuable public service of investing in an addition to the available stock of housing and should be encouraged to the extent possible. If he is too restricted, he will simply choose not to make such an investment and his potential tenants will be denied the opportunity to access that housing.

The current draft of the Principles of the Housing Act takes this approach to a great extent, by not specifying in great detail many aspects of the rental contract. But the issue does come up in the discussion of **Principle No. 2**, which notes that houses should not be classified by their ownership, but by their uses. Essentially, this view clashes with the concept of distinguishing the rights of private owners from public owners of rental housing. However, this conflict could be resolved by treating public rentals as a different use than private rentals, which is in actuality the case in Slovakia. Private rentals should have market rents. Public rentals, at the current low rents or even at "cost" rent and with alternative housing requirements, serve a social welfare purpose,

while private rentals are like any other commercial transaction, e.g., buying an automobile or a cabbage.⁴

Also, it is essential that the law allow for individual rental housing units, not just rental apartment houses. Most of the public and private rental units in the next ten years will be individual units in condominium or cooperative buildings.

The next place the need for a distinction arises is in **Principle No. 22**. As stated, this principle precludes the establishment of joint tenancies, except in the case of spouses. The reason is that this creates complicated legal situations, *because* of the special rights created in public rentals. However, such rights should not be created in private rentals and in fact it is common and straightforward to have joint tenancies among unrelated individuals (e.g., students, unmarried couples, roommates) in private rentals.

As noted above, there are two key aspects of the rental agreement without which a private rental market will not arise. These are (1) the free setting of rents and (2) the termination of leases and all obligations at the end of their term or in cases of non-payment. Many developing and even some Western European countries have limited one or the other or both of these aspects and destroyed or stunted their rental markets.

It is stated in **Principle No. 29** that Slovakia has existing laws and regulations governing the setting of residential rents. Since there are few, if any, private rental units currently (at least that are admitted to), these regulations apply only to public rentals. It appears that they are not currently applied there either, because the setting of public rents is a highly politicized issue, and not subject in a major way, so far, to economic considerations. Thus, it is not clear how far away from the freely determined market rent these regulated rents would be.

Two comments may be useful. First, the setting of regulated private rents is no more appropriate than the setting of regulated prices for cars or houses and will be very detrimental to the development of the sector. If the level is too low, the number of units offered is sharply reduced or, more likely, other means of rationing or charging for the apartment are utilized. If the level is too high, it has no effect except to push rents higher because of the fear of the regulations being changed.

Second, there are no grounds for mixing the rent setting process for private rentals with that for public rentals, if this is being contemplated. It is in the nature of public rentals that the rents be regulated in order to meet the social welfare purposes. It is in the nature of private rentals that their rents not be regulated, so that individuals are free to conclude leases on whatever terms are acceptable and that the market is encouraged to provide more rental housing.

For the same reason, there is no justifications to require that rental proceeds be allocated to a Maintenance Fund or segregated from the other property of the landlord. Homeowners are not required to set up maintenance funds and there is no reason to expect private landlords not to maintain their valuable property.

The important point here is that private rentals should not be considered as just another version of public rentals. Public rentals are generally long-term residences of people in need of some kind of assistance with their

⁴ In this regard, it may be worth noting that, in the Rental Housing Act passed by the Hungarian Parliament in 1993, the law freely and frequently imposes additional responsibilities and restrictions on housing owned by local governments or the State.

*housing. Private rentals are generally short-term residences of people in transition. They should not be forced or expected to play a role in meeting the long-term social welfare needs.*⁵

In the near term, when relatively little large scale rental housing will be developed privately, the private rental sector can be freed from the most onerous effects of rent regulation by an exemption for small-scale owners, with 5 or fewer units. This would allow the sector to start to grow and encourage its doing so in an open manner subject to other regulations and taxation.

The other of the two keys to a private rental sector, the enforcement through eviction of either non-payment of rent or the termination of the lease, appears to be supported by **Principles 30 and 32**. However, it is essential that it be clear in Principles No. 31-36 that private landlords incur no obligations beyond the terms stated in the lease contract with respect to housing the tenant or his or her relatives or paying moving costs. Concepts of "alternative housing" only make sense in public rentals. Similarly, legal machinery must be in place for expeditious removal of tenants whose lease have ended, whether by the passage of time or for the causes noted in the first part of Principle No. 32.

Adding Specific Provisions

This different treatment of private rentals can be introduced into the law several different ways. One is to write the law with a focus on private rentals, with special exceptions introduced for the special roles of public rentals. This is the approach in the United States, for example. However, this seems inadvisable because nearly all current tenants are in public rentals and, thus, they expect to be the focus of the law.

The major alternative is to introduce some explicit provisions exempting rentals not owned by the local governments or the State from certain provisions harmful to the interests of the landlord, including, at a minimum, the Principles 29, 31, and 36. Since there are few if any private rental tenants currently, it is appropriate to defend these provisions by noting that no current tenant will be hurt by these exemptions and that it is desirable to make it clear that anyone entering into a private rental contract in the future will not be "protected" by the same provisions as public rentals. Those needing and meriting protection from paying true market rents or for alternative housing should be in the public, not private, rental sector.

⁵ Private rentals can play a valuable role in a housing allowance program. In that case, landlords voluntarily agree to leasing at certain rents and terms. Such a situation does not discourage other landlords from offering unregulated rental units.